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In re Application of :
MOLLER LARSEN et al. :
Application No.: 10/534,769 :
PCT No.: PCT/DK03/00778 :
Int. Filing Date: 12 November 2003 :
Priority Date: 12 November 2002 :
Attorney Docket No.: 1175/74050 :
For: LIGHTNING PROTECTION OF A PITCH- :
CONTROLLED WIND TURBINE BLADE :

DECISION

This is a decision on applicants' "PETITION UNDER RULE 47", which has properly been treated as a petition under 37 CFR 1.47(a), filed 21 December 2005 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 12 November 2003, applicants filed international application PCT/DK03/00778, which designated the United States and claimed a priority date of 12 November 2002. A copy of the international application was communicated from the International Bureau to the USPTO on 27 May 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 12 May 2005.

On 12 May 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 18 October 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required.

On 21 December 2005, applicants filed the instant petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a declaration of inventors, the surcharge under 37 CFR 1.492(e) for providing the declaration of inventors later than thirty months from the priority date, a copy of an assignment, and a copy of a memo from Soren Hoffer.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to item (1), the petition fee is \$200 rather than \$130. The balance of \$70 has been charged to Deposit Account 03-3125.

Items (3) and (4) have been met.

As to item (2), it is not clear whether it is being alleged that non-signing inventor Flemming Moller Larsen refuses to execute the application or that he cannot be reached after diligent effort. At least one communication appears to have been sent to Mr. Moller Larsen's last known address. However, it is not clear whether he resided at this address when this communication was sent. Some type of verification that Mr. Moller Larsen resides at this address, such as a return receipt with Mr. Moller Larsen's signature, is required to establish a refusal to sign. Also, to establish a refusal to sign, it is required that the inventor be presented with the application papers (specification, including claims, drawings, and oath or declaration). See MPEP 409.03(d). It is not clear from the memo of Soren Hoffer that a copy of the application papers including the specification was sent to Mr. Moller Larsen. "It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray*, 115 USPQ 80 (Comm'r Pat. 1956)." MPEP 409.03(d). If Mr. Moller Larsen is no longer at this address, steps must be taken to locate his whereabouts and, if he is not located, documentation of those steps must be provided.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. **Failure to timely file the proper response will result in abandonment of this application.** Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,

Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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